

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TRAYVON R. CAIL,

Plaintiff,

v.

DONALD R. HOLBROOK,

Defendant.

CASE NO. 2:22-cv-00031-LK

ORDER ADOPTING IN PART
REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of United States Magistrate Judge David W. Christel. Dkt. No. 27. No party has filed objections. Having reviewed the R&R and the balance of the record, the Court adopts the R&R in part and grants Mr. Cail’s motions to proceed *in forma pauperis* (“IFP”) and for the record on appeal.

On September 29, 2023, the Court dismissed Mr. Cail’s 28 U.S.C. § 2254 petition for a writ of habeas corpus and granted a certificate of appealability on the sole issue of whether Mr. Cail is entitled to equitable tolling. Dkt. No. 18 at 11. Mr. Cail appealed and filed motions to proceed IFP in his appeal and for an evidentiary hearing or a copy of the record. Dkt. Nos. 20–22.

1 Judge Christel found that Mr. Cail's IFP application was deficient and ordered him to show cause.
2 Dkt. No. 25. Mr. Cail then filed an amended IFP application. Dkt. No. 26.

3 Judge Christel recommended that the Court deny Mr. Cail's first application to proceed
4 IFP as moot and grant Mr. Cail's amended IFP application. Dkt. No. 27 at 2.¹ Having reviewed
5 Mr. Cail's amended application, the Court adopts the R&R on that issue and grants the amended
6 application to proceed IFP.

7 Judge Christel also recommended that the Court deny Mr. Cail's Motion for the Record on
8 Appeal because unrepresented litigants are not required to file Excerpts of Record. Dkt. No. 27 at
9 2. However, Circuit Rule 30-1.7 requires that upon written request from an unrepresented prisoner,
10 the district court must forward to the prisoner "copies of the documents comprising the Excerpts
11 of Record so that the prisoner can prepare the briefs on appeal." *See also* Circuit Rule 30-3 (same).
12 Mr. Cail's motion is such a request. Dkt. No. 22 at 5 (stating that he seeks the documents "to have
13 a full record to cite and brief" on appeal); *see also* Dkt. No. 28 at 2 (requesting the records "for
14 effective reference and briefing"). Accordingly, the Court grants Mr. Cail's Motion for the Record
15 on Appeal, Dkt. No. 22, and denies his duplicative motion for those records and a status hearing
16 on the first motion, Dkt. No. 28.

17 For the foregoing reasons, it is hereby ORDERED that:

18 (1) The Court ADOPTS IN PART the Report and Recommendation, Dkt. No. 27;

19 (2) Mr. Cail's first application to proceed in forma pauperis, Dkt. No. 21, is DENIED
20 AS MOOT and his amended application to proceed in forma pauperis, Dkt. No. 26, is GRANTED.

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23 ¹ The Court "shall make a de novo determination of those portions of the report or specified proposed findings or
24 recommendations to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or
recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b)(3) (the
Court "must determine de novo any part of the magistrate judge's disposition that has been properly objected to.").

1 (3) Mr. Cail's motion for the record on appeal, Dkt. No. 22, is GRANTED, and his
2 second motion for those records and a status hearing on the first motion, Dkt. No. 28, is DENIED
3 AS MOOT.

4 (4) The Clerk is directed to send the following documents to Mr. Cail without charge:²


- 5 • A copy of the docket in this case;
- 6 • Dkt. No. 3, Petition for writ of habeas corpus
- 7 • Dkt. No. 4, Order to Substitute and for Service and Answer
- 8 • Dkt. No. 7, Response to petition
- 9 • Dkt. No. 8, State court record and exhibits
- 10 • Dkt. No. 9, Report and Recommendation
- 11 • Dkt. No. 10, Objections
- 12 • Dkt. No. 11, Motion for extension
- 13 • Dkt. No. 12, Order granting motion for extension
- 14 • Dkt. No. 13, Supplemental memorandum
- 15 • Dkt. No. 14, Response to supplemental memorandum
- 16 • Dkt. No. 18, Order adopting Report and Recommendation in part
- 17 • Dkt. No. 19, Judgment
- 18 • Dkt. No. 20, Notice of Appeal
- 19 • Dkt. No. 21, Motion for Leave to Appeal in forma pauperis
- 20 • Dkt. No. 22, Motion for the Record on Appeal
- 21 • Dkt. No. 24, Letter Requesting Transcripts
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24 ² "If the prisoner was granted leave to proceed in forma pauperis at the district court or on appeal, the copies will be produced at no charge to the prisoner." Circuit Rule 30-1.7.

- Dkt. No. 25, Order to Show Cause re Motion for Leave to Appeal
- Dkt. No. 26, Amended Motion for Leave to Proceed In Forma Pauperis
- Dkt. No. 27, Report and Recommendation re Motion for Leave to Appeal
in forma pauperis

The Clerk is directed to send uncertified copies of this Order to Judge Christel, all counsel of record, and Mr. Cail.

Dated this 16th day of November, 2023.



Lauren King
United States District Judge